

# Order

Entered: June 11, 2002

## Michigan Supreme Court Lansing, Michigan

Maura D. Corrigan,  
Chief Justice

Michael F. Cavanagh  
Elizabeth A. Weaver  
Marilyn Kelly  
Clifford W. Taylor  
Robert P. Young, Jr.  
Stephen J. Markman,  
Justices

2002-25

Proposed Amendments of Rules 6.445  
and 6.610 of the Michigan Court Rules

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On order of the Court, this is to advise that the Court is considering amendments of Rules 6.445 and 6.610 of the Michigan Court Rules. Before determining whether the proposal should be adopted, changed before adoption, or rejected, this notice is given to afford interested persons the opportunity to comment. The Court welcomes the views of all who wish to address the form or the merits of the proposal or to suggest alternatives. Before adoption or rejection, the proposal will be considered by the Court at a public hearing. Notice of future public hearings will be posted on the Court's website, [www.courts.michigan.gov/supremecourt](http://www.courts.michigan.gov/supremecourt).

Publication of this proposal does not mean that the Court will issue an order on the subject, nor does it imply probable adoption of the proposal in its present form.

[The present language of MCR 6.445 and 6.610 would be amended as indicated below.]

### Rule 6.445 Probation Revocation

(A) - (F) [Unchanged.]

(G) Sentencing. If the court finds that the probationer has violated a condition of probation, or if the probationer pleads guilty to a violation, the court may continue probation, modify the conditions of probation, extend the probation period, or revoke probation and impose a sentence of incarceration. The court may not sentence the probationer to prison without having considered a current presentence report and having complied with the provisions set forth in MCR 6.425(B), (D)(2), and (D)(3). In a misdemeanor case, the court may not impose a jail term on a probationer who was entitled to appointed counsel on the underlying offense unless the probationer was represented by an attorney or waived the right to an attorney.

(H) [Unchanged.]

Rule 6.610 Criminal Procedure Generally

(A) - (C) [Unchanged.]

(D) Arraignment; District Court Offenses.

(1) [Unchanged.]

(2) An indigent defendant has a right to an appointed attorney whenever

(a) the offense charged requires on conviction a minimum term in jail; or might lead to incarceration.

(b) ~~the court determines that it might sentence the defendant to jail.~~

~~If an indigent defendant is without an attorney and has not waived the right to an appointed attorney, the court may not sentence the defendant to jail.~~

(3) - (4) [Unchanged.]

(E) Pleas of Guilty and No Contest. Before accepting a plea of guilty or no contest the court shall in all cases comply with this rule.

(1) [Unchanged.]

(2) The court shall inform the defendant of the right to the assistance of an attorney. If

(a) the offense charged requires on conviction a minimum term in jail, or

(b) ~~the court determines that it might sentence the defendant to jail,~~

the court shall inform the defendant that if the defendant is indigent he or she has the right to an appointed attorney. The court also shall give such advice if it determines that the conviction might lead to incarceration.

~~A subsequent charge or sentence may not be enhanced because of this conviction unless a defendant who is entitled to appointed counsel is represented by an attorney or waives the right to an attorney.~~

(3) - (8) [Unchanged.]

(F) Sentencing.

(1) At the sentencing, the court shall:

- (a~~1~~) require the presence of the defendant's attorney, unless the defendant does not have one or has waived the attorney's presence;
- (b~~2~~) give the defendant's attorney or, if the defendant is not represented by an attorney, the defendant an opportunity to review the presentence report, if any, and to advise the court of circumstances defendant believes should be considered in imposing sentence; and
- (c~~3~~) inform the defendant of credit to be given for time served, if any.

(2) Unless a defendant who is entitled to appointed counsel is represented by an attorney or has waived the right to an attorney, a subsequent charge or sentence may not be enhanced because of this conviction and the defendant may not be incarcerated for violating probation or any other condition imposed in connection with this conviction.

(G) - (H) [Unchanged.]

Staff Comment: The Supreme Court is considering amendments of MCR 6.445(G), 6.610(D), 6.610(E), and 6.610(F), in light of *Shelton v Alabama*, 535 US \_\_\_\_; 122 S Ct 1764; \_\_ L Ed 2d \_\_\_\_ (2002).

The staff comment is published only for the benefit of the bench and bar and is not an authoritative construction by the Court.

A copy of this order will be given to the secretary of the State Bar and to the State Court Administrator so that they can make the notifications specified in MCR 1.201. Comments on this proposal may be sent to the Supreme Court clerk in writing or electronically by October 1, 2002, P.O. Box 30052, Lansing, MI 48909, or MSC\_clerk@jud.state.mi.us. When filing a comment, please refer to file 2002-25. Your comments and the comments of others will be posted at [www.courts.michigan.gov/supremecourt](http://www.courts.michigan.gov/supremecourt).